IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1125 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHD FIROZ MOHD MANJUT SAIYAD

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr S P Dave, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2001

ORAL JUDGEMENT

The petitioner above named, has preferred this petition under Article 226 of the Constitution of India, challenging the order passed by the Commissioner of Police, Shahibaug, Ahmedabad on 2.8.2000 in Case No. PCB/DTN/PASA/244/2000 detaining the present petitioner as

"dangerous person" under the provisions made in Section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the Act').

2. The case of the respondent against the petitioner is that the petitioner was found to be a dangerous person within the meaning of Section 3(2) of the Act and, therefore, his activities were detrimental and prejudicial to the maintenance of the public order and, therefore, he being a dangerous person, was required to be detained in terms of the orders passed and referred to hereinabove. Before the aforesaid order was recorded by the second respondent, in order to arrive at the aforesaid subjective satisfaction, the detaining authority has relied upon the statements of two witnesses whose names have not been disclosed in order to maintain security and in order to see that the witnesses are not harassed. The statements of those witnesses were recorded on 31.7.2000 by the sponsoring authority. Those statements appear to have been verified by the Detaining Authority on 1.8.2000 and the detention order was passed on the very next day i.e. on 2.8.2000. The petitioner contends that the detaining authority has not done any exercise to verify the genuineness and correctness of those statement of witnesses and has mechanically accepted the proposal sent by the sponsoring authority. That therefore, the subjective satisfaction of the detaining authority gets vitiated. On the aforesaid grounds, it is prayed that the present petition be allowed and the aforesaid order dated 2.8.2000 be quashed and set aside and the present detenu be set at liberty.

2. On receiving the petition, rule was issued and Mr S P Dave, learned AGP appears on behalf of all the respondents and waives service. I have heard the learned Advocate for the parties and have perused the papers.

3. Learned Advocate for the petitioner has argued that the detaining authority has placed reliance on two unnamed witnesses whose statements have been recorded by the sponsoring authority on 31.7.2000. The detaining authority is said to have verified those statements on 1.8.2000 and on the very next day i.e. on 2.8.2000, the impugned order has been passed by him. On the strength of the aforesaid fact, it is contended on behalf of the petitioner that it is a mechanical exercise of powers without actual application of mind on the materials placed before the detaining authority by the sponsoring authority and, therefore, the order of detention stands vitiated.

4. The learned AGP states that the detaining authority had sufficient time to apply mind and in fact the detaining authority has applied its mind on the aforesaid aspects of the case and, therefore, the order of detention is legal and valid. In support of his contention, the petitioner has relied upon a decision in the case of Kalidas Kahar v. State, reported in 1993 (2) GLR 1659. In para 6 of the said judgment, it has been observed as follows:

> "His second contention is that the detaining authority has wrongly exercised the powers under section 9(2) of the PASA Act and by such wrong exercise of powers the detenu, right to make a representation under Article 22(5) of the Constitution has been infringed. He further elaborates his submission by pointing out that the statements of the witnesses have been recorded on 16th October, 1992 and that the said statements have been verified by the Superintendent of Police, C Division, Baroda City on 16th October, 1992. It has been pointed out by the learned AGP Mr Y M Thakkar that the proposal in the case was made on 16th October, 1992 and the order of detention was passed on 17th October, 1992. It is rather curious that the entire bunch of material was supplied by the sponsoring authority at the time of making the proposal and that has been promptly accepted by the detaining authority and passed the order on the next day itself. At the time of exercising the privilege under section 9(2) of PASA, the balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. as against this there is a provision under section 9(2) craved out on the basis of Article 22(5) of the

> Constitution which provides that nothing in sub-section (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of PASA. Looking to the facts and circumstances of the case, it is clear, as stated hereinabove, that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under section 9(2) as the proposal was made on 16th October, 1992 and the order of detention was passed on the following day, i.e. on 17th October, 1992, nor is there any material to show as to how he examined the necessity of exercising the power under section 9(2). Under the circumstances, in our view, it is a wrong exercise of power under sec. 9(2) which has affected the detenu's right of making as effective representation under Article 22(5) of the Constitution of India and therefore, the illegal and the impugned detention order is required to be quashed and set aside."

Therefore, in that case also the statements of witnesses were recorded in October, 1992. The said statements were verified by the detaining authority on the same day i.e. on 16.10.1992 and the detention order was passed on 17.10.1992. On the aforesaid facts, it was held by this court in the aforesaid decision that it was a case of non-application of mind and, therefore, the order of detention stands vitiated. Similar observations can be found from a decision of this court in the case of Ranubhai Bharward v. State of Gujarat, reported in 2000(3) GLR 2696.

5. In view of the aforesaid decision, it becomes clear that there is a case of non-application of mind in the case before us also. In fact the detaining authority was required to carry out some exercise which would not

merely show that he has verified the statements but it really appears that he has applied his mind to the facts stated in those statements and the genuineness and correctness of the statement were in fact verified by him. The records do not show that such an application of mind and in absence of such materials. It is not possible to uphold the decision arrived at by the detaining authority. I find no reason to differ from the view expressed in the foregoing discussion in the aforesaid decision of this court. Once the principle laid down in the aforesaid decision is accepted, then in that event, the facts of the present case would stand squarely covered by the aforesaid decision and once such decision is followed, the order of detention of the petitioner impugned in the petition will have to be treated as illegal.

6. In the above view of the matter, there is no alternative but to allow this petition. Consequently, the present petition is ordered to be allowed and the order of detention passed on 2.8.2000 against the present detenu by the second respondent is quashed and set aside. The detenu is ordered to be set at liberty, if not required in any other case. Rule is made absolute. Direct Service is permitted.

20.4.2001 [D P Buch, J.]
msp